

1 Howard Holderness, CA Bar No. 169814  
 2 MORGAN, LEWIS & BOCKIUS LLP  
 3 1 Market Street, Spear Tower, 25th Floor  
 San Francisco, CA 94105  
 (415) 442-1000 (Telephone)  
 (415) 442-1001 (Facsimile)

4 Charles L. Babcock, IV, TX Bar No. 01479500  
 5 JACKSON WALKER L.L.P.  
 6 1401 McKinney, Suite 1900  
 Houston, Texas 77010  
 Admitted Pro Hac Vice  
 7 (713) 752-4200  
 (713) 752-4221

8

9 George L. McWilliams  
 10 LAW OFFICE OF GEORGE L. MCWILLIAMS, P.C.  
 TX Bar No. 13877000; AR Bar No. 68078  
 11 406 Walnut, P.O. Box 58  
 Texarkana, ARK-TX 75504-0058  
 Admitted Pro Hac Vice  
 12 (903) 277-0098 (Telephone)  
 (870) 773-2967 (Facsimile)

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14 Attorneys for Respondent  
 RICHARD FRENKEL

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 ILLINOIS COMPUTER RESEARCH, LLC,  
 Plaintiff and Counterclaim Defendant,

18 vs.

19 FISH & RICHARDSON P.C.,  
 20 Defendant, Counterclaimant and Third  
 Party Plaintiff,

21 vs.

22 SCOTT C. HARRIS,  
 23 Third-Party Defendant and  
 Counterclaimant

24 vs.

25 FISH & RICHARDSON P.C.,  
 26 Defendant, Counterclaimant, Third  
 Party Plaintiff and Counterclaim  
 27 Defendant

Miscellaneous Action No.  
 CV 5:08-mc-80075-JF (HRL)

**RICHARD FRENKEL'S NOTICE  
 OF INTENT TO USE EVIDENCE  
 FROM RELATED CASE, OR IN  
 THE ALTERNATIVE, MOTION  
 FOR LEAVE TO SUBMIT  
 DECLARATION OF RICHARD  
 FRENKEL FILED ON APRIL 21,  
 2008 IN N.D. CAL. CASE 5:08-MC-  
 80074-JF-HRL (DOCKET NO. 16)**

Hearing Date: May 13, 2008  
 Time: 10:00 a.m.  
 Courtroom: 2

Hon. Magistrate Judge Howard Lloyd

Richard Frenkel (“Frenkel”), a non-party to the underlying case,<sup>1</sup> hereby gives notice that he intends to rely upon the declaration he filed in opposition to the Motion Under Fed.R.Civ.P. 45 of Illinois Computer Research LLC and Scott C. Harris to Compel Richard Frenkel’s Deposition and Document Production in April 2008 (“motion to compel”) (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 16). To the extent necessary, he requests leave to submit that declaration (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 16), attached hereto as Exhibit “A,” in support of his motion to quash subpoena and for protective order.

On April 7, 2008, Illinois Computer Research LLC and Scott C. Harris (collectively, “Issuers”) moved to compel Frenkel to provide testimony and produce documents (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 1). Later that same day, Frenkel filed a motion to quash subpoena and for protective order (N.D. Cal. Case 5:08-mc-80075-JF-HRL, docket no. 1). On April 21, 2008, Frenkel filed his response to Issuers’ motion to compel (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 15). On that same day, Issuers withdrew their motion to compel (N.D. Cal. Case 5:08-mc-80074-JF-HRL, docket no. 14), and the following day filed their response to Frenkel’s motion to quash subpoena and for protective order (N.D. Cal. Case 5:08-mc-80075-JF-HRL, docket no. 21), taking the position that Frenkel is precluded from introducing anymore evidence in support of his motion to quash subpoena and for protective order. Response to Mot. to Quash pp. 9-10.

We ask the Court to take notice of the related proceeding (N.D. Cal. Case 5:08-mc-80074-JF-HRL) and the substantial effort Frenkel took to provide a full response to the

<sup>1</sup> *Illinois Computer Research LLC v. Fish & Richardson, P.C.*, pending in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 07 C 5081.

Court. Issuers' withdrawal of the motion to compel means that the Court will not be able to decide Frenkel's motion to quash subpoena and for protective order on a complete record unless it references Frenkel's declaration filed in response to the motion to compel.

We do not know why the issuers raced to file their motion to compel and then, without notice to Frenkel's counsel, withdrew it on the date his response was due. Whatever their motivation, the effect of the withdrawal will preclude a full factual understanding of the issues if the Court sustains Issuers' objection to Frenkel supplementing the record.

We are providing this notice as soon as practicable for the court and for opposing counsel. N.D. Cal. Civil L.R. 7-3(c) ("The reply may include affidavits or declarations, as well as a supplemental brief or memorandum under Civil L.R. 7-4. ....").<sup>2</sup>

Wherefore, premises considered, Richard Frenkel hereby provides notice to the Court and to opposing counsel that he intends to rely upon the declaration he filed in opposition to Issuers' motion to compel, or in the alternative, respectfully requests that the Court grant leave to allow him to file his supplemental declaration in support of his motion to quash subpoena and for protective order.

<sup>2</sup> Once we have had an opportunity to fully digest the Issuers' voluminous response to the motions to quash subpoena and for protective order, Frenkel reserves the right to add a supplemental declaration and attach it to his reply, which is due on April 29, 2008.

1 Dated: April 24, 2008

MORGAN, LEWIS & BOCKIUS LLP

2 By /s/ Howard Holderness  
3 Howard Holderness

4 Attorneys for Respondent  
5 RICHARD FRENKEL

6 Dated: April 24, 2008

JACKSON WALKER L.L.P.

7 By /s/ Charles L. Babcock  
8 Charles L. Babcock

9 Attorneys for Respondent  
10 RICHARD FRENKEL

11 Dated: April 24, 2008

LAW OFFICE OF GEORGE L. MCWILLIAMS,  
12 P.C.

13 By /s/ George L. McWilliams  
George L. McWilliams

14 Attorneys for Respondent  
15 RICHARD FRENKEL

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4  
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 6 1401 McKinney, Suite 1900  
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 TX Bar No. 13877000; AR Bar No. 68078  
 11 406 Walnut, P.O. Box 58  
 Texarkana, ARK-TX 75504-0058  
 12 Admitted Pro Hac Vice  
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 15 RICHARD FRENKEL

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 ILLINOIS COMPUTER RESEARCH, LLC,  
 Plaintiff and Counterclaim Defendant,

Miscellaneous Action No.  
 CV 5:08-mc-80074-JF (HRL)

19 vs.

**PROOF OF SERVICE**

20 FISH & RICHARDSON P.C.,  
 21 Defendant, Counterclaimant and Third  
 Party Plaintiff,

22 vs.

23 SCOTT C. HARRIS,  
 24 Third-Party Defendant and  
 Counterclaimant

25 vs.

26 FISH & RICHARDSON P.C.,  
 27 Defendant, Counterclaimant, Third  
 Party Plaintiff and Counterclaim  
 Defendant

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**CERTIFICATE OF SERVICE**

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is One Market St., Spear Tower, San Francisco, CA 94105.

On April 24, 2008, I served on the interested parties in said action the within document(s) as indicated on the attached service list:

**RICHARD FRENKEL'S NOTICE OF INTENT TO USE EVIDENCE FROM RELATED CASE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO SUBMIT DECLARATION OF RICHARD FRENKEL FILED ON APRIL 21, 2008 IN N.D. CAL. CASE 5:08-MC-80074-JF-HRL (DOCKET NO. 16)**

- (Via Facsimile) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
  - (Via U.S. Mail) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
  - (Via Overnight Delivery—Federal Express) by placing the document(s) listed above in a sealed **Federal Express** envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a **Federal Express** agent for overnight delivery.
  - (Via Hand Delivery—Attorney Service) by personally delivering, through an authorized courier/attorney service, the document(s) listed above to the person(s) at the address(es) set forth below.
  - by **e-mailing** the document(s) listed above to the addressee(s) noted below.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Signed April 24, 2008, in San Francisco, California.

/s/  
Dolores M. Rivera

## **SERVICE LIST**

Raymond P. Niro  
Paul K. Vickrey  
Richard B. Megley, Jr.  
Karen L. Blouin  
Niro, Scavone, Haller & Niro  
181 West Madison, Suite 4600  
Chicago, IL 60602  
(312) 236-0733  
(312) 236-3137 - Facsimile

**Attorneys for Plaintiff, ILLINOIS  
COMPUTER RESEARCH, LLC and  
SCOTT C. HARRIS, Third Party  
Defendant**

Peter M. Rehon  
Mark V. Isola  
Rehon & Roberts  
Ten Almaden Blvd., Suite 550  
San Jose, CA 95113-2238  
(408) 494-0900  
(408) 494-0909 – Facsimile

**Attorneys for Plaintiff, ILLINOIS  
COMPUTER RESEARCH, LLC and  
SCOTT C. HARRIS, Third Party  
Defendant**

12 David J. Bradford  
Terrence J. Truax  
13 Eric A. Sacks  
Daniel J. Weiss  
14 Jenner & Block, LLP  
330 North Wabash Avenue  
15 Chicago, IL 60611  
(312) 222-9350  
16 (312) 527-0484 – Facsimile

Attorneys for FISH & RICHARDSON,  
P.C., Defendant

17 Charles L. Babcock, IV  
Jackson Walker  
1401 McKinney, Suite 1900  
18 Houston, Texas 77010

## **Attorneys for Non-Party CISCO SYSTEMS, INC.**

19 George L. McWilliams  
20 Law Offices of George L. McWilliams, P.C.  
406 Walnut, P.O. Box 58  
21 Texarkana, ARK 71854-5219

**Attorneys for Non-Party RICHARD FRENKEL**

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